April 21, 2015

BY HAND

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: ***Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations,* MB Docket No. 14-90**
WRITTEN *EX PARTE* PRESENTATION;
REDACTED - FOR PUBLIC INSPECTION

Dear Ms. Dortch:

AT&T Inc. ("AT&T") and DIRECTV (collectively, the "Applicants") have demonstrated that the combined company will continue to have strong incentives to support and promote the online video distributor ("OVD") services that both stand-alone broadband and bundle consumers increasingly demand. Indeed, the synergies and additional capabilities made possible by the merger will drive the combined company to bring enhanced OVD options to consumers across all screens and to promote future development and innovation in both wireline and mobile delivery of online video.

In the current record, the witness statements, business documents, economic analyses, and other evidence confirm that this transaction will not only create a stronger competitor to cable, but also a competitor that, like AT&T today, considers providing seamless and high-quality access to the full range of OVD services to be a strategic imperative. This submission summarizes that extensive evidence.

I.
AT&T HAS NO ABILITY TO HARM OVDs AND THE TRANSACTION DOES NOT CHANGE THAT

While some commenters have expressed a general concern about "industry consolidation," none delves deeply into the specifics of this transaction. Nor do commenters take into account the many reasons why the combination of AT&T and DIRECTV is unique. In truth, the particular assets involved in this merger establish that the transaction does not pose any threat to OVD services.[1] Specifically:

- AT&T has a regional, not national, broadband footprint.[2] DIRECTV has no broadband facilities.[3]

- AT&T serves less than **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION] [END AT&T HIGHLY CONFIDENTIAL INFORMATION]** of all U.S. high-speed Internet subscribers.[4] DIRECTV has no broadband customers.[5]

- AT&T has fewer than **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION] [END AT&T HIGHLY CONFIDENTIAL INFORMATION]** customers with a product that meets the Commission's current 25 Mbps definition of broadband.[6] To put that number in perspective, Comcast reports that 93% of its customers – over 20 million in all – have 25 Mbps or faster service.[7]

---

[1] *See generally* Joint Opposition of AT&T Inc. and DIRECTV to Petitions to Deny and Condition and Reply to Comments at 32-49 (filed Oct. 16, 2014) ("Joint Opposition"); Reply Declaration of Michael L. Katz ¶¶ 60-78 (Oct. 15, 2014) ("Katz Reply Decl.").

[2] Public Interest Statement of AT&T and DIRECTV at 10 (filed June 11, 2014) ("Public Interest Statement").

[3] *Id.* at 1, 7.

[4] Katz Reply Decl. ¶ 66.

[5] Public Interest Statement at 13-14.

[6] *See* AT&T Information Request Response at Ex. 5.b.1 (filed Oct. 7, 2014).

[7] Letter from Francis M. Buono, Willkie Farr & Gallagher LLP, Counsel for Comcast Corp., to Marlene H. Dortch, Secretary, FCC, MB Dkt No. 14-57, at 2 (Apr. 17, 2015); Comcast Corp. 2014 Annual Report (10-K) at 3 (reporting that Comcast serves 22 million broadband subscribers).

- Unlike a combination of two companies that offer broadband, AT&T is not acquiring any additional broadband subscribers or assets from DIRECTV. As a result, this transaction results in *no* change to AT&T's broadband footprint.[8]

- AT&T has no significant video programming interests to protect.[9]

- AT&T is not acquiring significant "must have" video programming interests from DIRECTV.[10]

- Many of AT&T's Internet subscribers do not purchase linear video services from AT&T or DIRECTV.[11]

- Most DIRECTV customers do not (and often cannot) purchase Internet service from AT&T.[12]

- A customer that drops AT&T broadband service almost always drops the whole bundle of home communications and entertainment services he or she purchases from AT&T.[13]

Setting aside potential concerns that might relate to the consolidation of entities with extensive broadband footprints and significant content, it is clear that *this* transaction poses no threat to OVD development. It neither changes AT&T's ability to degrade its customers' access to OVD content nor gives it any incentive to do so. To the contrary, AT&T must offer all of its high-speed Internet customers as rich an entertainment environment as possible to compete

---

8 *See* Joint Opposition at 32.

9 *See* Public Interest Statement at 13.

10 Joint Opposition at 33.

11 *See, e.g.*, AT&T Information Request Response at Ex. 6.b.1.

12 *See, e.g.*, DTV-FCC-00638653 (rows 649 and 650); Public Interest Statement at 1, 3, 10 n.4; Response of DIRECTV to FCC Information Request Dated September 9, 2014, at Response No. 4(a) (filed Oct. 7, 2014) (DIRECTV "can provide MVPD services to virtually all households in the United States, including Alaska and Hawaii, that have an unobstructed line of sight to its satellites.").

13 ATT-FCC-000000040 - ATT-FCC-000000044 (filed June 25, 2014) (AT&T ordinary-course Product Churn by Bundle Type reports showing that an average of approximately **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION] [END AT&T HIGHLY CONFIDENTIAL INFORMATION]** of all disconnecting U-verse broadband subscribers also disconnected all other AT&T products (or only kept wireless service)).

effectively with cable and other rivals with networks that typically offer much higher broadband speeds and often own substantial important content. And if AT&T's cable or other rivals view OVD development differently, that only strengthens AT&T's incentive to promote high-quality access to OVD content to win the business of its rivals' dissatisfied customers.

II.
AT&T HAS NO INCENTIVE TO HARM OVDs AND THE TRANSACTION DOES NOT CHANGE THAT

Nor will the combined company have an *incentive* to degrade consumer access to OVDs. AT&T has very limited ownership interests in video programming today, and this will remain the case after acquiring DIRECTV's few programming assets.[14] Neither AT&T nor DIRECTV has a controlling interest in a national network. Neither holds any broadcast interests such as owned and operated television stations. Neither owns any local sports or news channels. With respect to sports, DIRECTV owns only two RSNs outright,[15] has a minority interest with the Seattle Mariners in a third,[16] and has jointly purchased with AT&T a struggling RSN in Houston.[17] The chart below summarizes the limited content holdings of AT&T and DIRECTV and compares them to those of other broadband providers:

14 Public Interest Statement at 13-14.

15 DIRECTV currently owns and operates Root Sports Pittsburgh and Root Sports Rocky Mountain (based in Denver). *Id.* at 14.

16 DIRECTV holds a minority interest in, and manages, the Seattle-based RSN, Root Sports Northwest. *Id.*

17 On November 3, 2014, a federal bankruptcy court approved a plan under which AT&T and DIRECTV would jointly purchase a struggling Houston RSN. *In re Houston Regional Sports Network, LP, Disclosure Statement Related to* Chapter 11 Plan Dated August 6, 2014 in Respect of Houston Regional Sports Network, L.P., U.S. Bankruptcy Court, Southern District of Texas, Case No. 13-35998 ("*In re Houston").* Comcast has filed an appeal of this ruling.

CONTENT HOLDINGS			
AT&T	DIRECTV	COMCAST[18]	TIME WARNER CABLE[19]
1 RSN (1 JV)	3 RSNs (1 JV)	24 National Cable Networks 10 RSNs 10 NBC O&Os 17 Telemundo O&Os	16 RSNs 37 Local News, Lifestyle, & Sports Channels

The record is also clear that degrading access to OVDs in an attempt to benefit the combined company's MVPD business post-merger would be a losing strategy.[20] Broadband customers are valuable and bundle customers even more so. Providing high-quality services aimed at retaining and attracting profitable broadband and bundle customers is, and will remain, at the heart of AT&T's business. As AT&T's internal documents and sworn statements make clear,[21] AT&T views itself as fundamentally a broadband company and this transaction is driven in large part by the desire to enhance AT&T's broadband offerings to drive both broadband *and* video growth.[22] The combined company can remain competitive only if it provides customers with as rich an entertainment environment as possible, which necessarily includes seamless and high-quality access to the full range of OVD services that consumers demand. Indeed, nearly two-thirds of all Internet traffic today is OVD traffic.[23]

---

[18] *See Applications of Comcast Corp. and Time Warner Cable Inc. for Consent Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Transfer Control of Subsidiaries of Time Warner Cable Inc.*, MB Docket No. 14-57, Applications and Public Interest Statement of Comcast and Time Warner Cable, at 12-13, Ex. 5 ¶¶ 33-34 (filed April 8, 2014).

[19] *Id.* at Ex. 5 ¶ 37; Ex. 8.

[20] *See* Joint Opposition at 34-39; Katz Reply Decl. ¶¶ 72-78.

[21] *See, e.g.*, Declaration of Lori M. Lee, Senior Executive Vice President – Home Solutions for AT&T Inc., ¶¶ 4, 7-9 (June 10, 2014); ATT-FCC-00552010 **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]**

[END AT&T HIGHLY CONFIDENTIAL INFORMATION]; ATT-FCC-00642367 at 1 **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]**

[END AT&T HIGHLY CONFIDENTIAL INFORMATION].

[22] Public Interest Statement at 39-45; Joint Opposition at 34.

[23] Cisco, *Cisco VNI: Forecast and Methodology, 2013-2018*, at 2 (June 10, 2014).

Professor Michael Katz has estimated the impact of a theoretical OVD degradation strategy on sales of AT&T services (both when sold in bundles and on a standalone basis) using the model created by Professors Berry and Haile. That model is based on a robust and extensive set of data that produces an extremely reliable simulation of the combined company's actions. The model predicted that, in response to an increase in the price of AT&T broadband services (which, under basic principles of economics, is equivalent to a decrease in quality of broadband services), AT&T's sales of *both broadband and video would fall*.[24] This follows from the prevalence of bundles in the industry; when consumers drop AT&T broadband service they almost always drop video service as well.[25] If AT&T were to weaken one component of the bundle, it would hurt the sales of all of the bundle components.

As a result, pursuing a hypothetical OVD discrimination strategy simply would not work for AT&T. AT&T would risk not only broadband profits, but also the associated double or triple play revenues and profits – which include video profits[26] – all in the hope of saving video profits for just a small subset of customers. Further, many AT&T broadband subscribers do not have U-verse or DIRECTV video, many are unlikely to have U-verse or DIRECTV video post-merger, and many consider online video a complement to, not a substitute for, traditional MVPD

---

[24] Katz Reply Decl. ¶ 78; *see also* Letter from Maureen R. Jeffreys to Marlene H. Dortch (filed Oct. 20, 2014) (enclosing materials relied upon in Professor Katz's Reply Declaration). From an economic perspective, increasing price (holding quality constant) is equivalent to decreasing quality (holding price constant). *See, e.g.*, Say, Jean Baptiste, *A Treatise on Political Economy; or, the Production, Distribution, and Consumption of Wealth*, Philadelphia: J.B. Lippincott & Co., New American Edition, translated by C.R. Prinsep. Chapter VIII, at 465 (1855) ("A purchase of inferior quality at equal price is equivalent to a purchase of equal quality and superior price."); "Frequently Asked Questions about Hedonic Quality Adjustment in the CPI," Bureau of Labor Statistics, *available at* http://www.bls.gov/cpi/cpihqaqanda.htm (recognizing need to account for quality when measuring prices, such as in the construction of price indices – *i.e.*, an increase in quality is equivalent to a decrease in price). *See also* Joint Opposition at 19 (noting that "merger-related cost savings will also result in better products, more attractive bundles, and wider availability of broadband, which all translate to a decrease in the quality-adjusted price to consumers."); Katz Reply Decl. ¶ 50 ("[T]he lower programming costs will trigger a large increase in network investment, which will give rise to a large decrease in the quality-adjusted prices faced by millions of consumers.").

[25] ATT-FCC-000000040 - ATT-FCC-000000044 (filed June 25, 2014) (AT&T ordinary-course Product Churn by Bundle Type reports showing that an average of approximately **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]** of all disconnecting U-verse broadband subscribers also disconnected all other AT&T products (or only kept wireless service)).

[26] Joint Opposition at 37; Katz Reply Decl. ¶ 75.

services. For all of these subscribers, a degradation strategy would result only in losses of high-value broadband or bundle subscribers with absolutely no offsetting gain in video-only profits.[27]

In addition, it is important to recognize that AT&T's incentive to provide high-quality access to OVD content only increases if any of AT&T's cable and other rivals with different business portfolios (particularly significant portfolios of extremely valuable owned content) would find it profitable to degrade OVD access. That is because a cable rival's decision to reduce the quality of its service would provide AT&T with an enormously valuable opportunity to differentiate its own high-quality service offerings to attract subscribers from the rival. In this regard, AT&T is always on the lookout for opportunities to improve the quality of its broadband and bundle service offerings to differentiate them from the offerings of rivals that typically have networks capable of far higher speeds to most customer locations.

Even for AT&T broadband subscribers who do have U-verse or DIRECTV video (or will do so post-merger), degrading access to OVD content may decrease demand by subscribers who would not have considered cord-cutting or cord-shaving. In fact, studies of potential cord-cutting suggest that only a small share of video subscribers are likely or potential cord-cutters.[28] And those customers are likely the ones who are most sensitive to broadband quality and hence most likely to drop AT&T broadband service if OVD quality was not satisfactory. For the remaining subscribers who would not consider cutting or shaving the cord, reducing quality (OVD degradation) would drive some away – imposing a very real cost but offering *no* offsetting benefit. This is especially true in DSL areas, since cord-cutting and cord-shaving by DSL

---

27 *See* Katz Reply Decl. ¶ 77.

28 *See, e.g.,* Glen Hower, *The Skinny on HBO, OTT, and Cord-Cutting*, ParksAssociates, (Jan. 28, 2015) http://www.parksassociates.com/blog/article/the-skinny-on-hbo--ott--and-cord-cutting (although survey respondents who intended to cord-cut doubled from 4% to 8% between 2012 Q1 and 2014 Q4, the share of respondents who were video subscribers decreased only one percentage point (from 87% to 86%)); Samantha Bookman, *Cord Cutting Increased by 1.4M Homes in 2014, Analyst Says*, FierceOnlineVideo (Feb. 25, 2015), http://www.fierceonlinevideo.com/story/cord-cutting-increased-14m-homes-2014-analyst-says/2015-02-25 ("As many as 1.4 million U.S. households either cut their pay-TV subscription or never had one in the first place."); *Q4 2014 Video Trends Report: Consumer Behavior Across Pay-TV, VOD, OTT, Connected Devices and Content Discovery*, Digitalsmiths at 3, http://www.digitalsmiths.com/downloads/Digitalsmiths_Q4_2014_Video_Discovery_Trends_Report-Consumer_Behavior_Across_Pay-TV_VOD_OTT_Devices_and_Content_Discovery.pdf (6.8% of U.S. and Canadian MVPD subscribers planned to cut service or switch to an online service in the next six months); *TDG: Cord Cutting Proclivities Remain Unchanged Among Adult Broadband Users*", TDGResearch (June 5, 2014), http://tdgresearch.com/cord-cutting-proclivities-remain-unchanged-among-adult-broadband-users/ (only 2.9% of subscribers "definitely will cancel", 4.2% "moderately likely to cancel" and 7.7% "somewhat likely to cancel").

subscribers is highly unlikely, although the degradation of access to OVDs may still decrease demand for AT&T DSL services (and put at risk not only the profits from the DSL service itself but the profits from the other services the customer does, or would, bundle with the DSL service).

III.
THERE IS NO BASIS TO CLAIM THAT AT&T HAS USED INTERCONNECTION CONGESTION TO HARM OVDs

For the reasons stated above, it is clear that this transaction creates no economic incentive for the merged firm to harm OVDs. While Cogent and Netflix mischaracterize their commercial peering disputes as evidence of such an incentive,[29] the record does not support those claims.[30] Rather, AT&T has a long record of freely negotiating mutually beneficial agreements for access to its Internet backbone network.[31] Content providers can access AT&T's network through transit arrangements, AT&T's Managed Internet Services product, and Content Delivery Networks. Under transit arrangements, providers wishing to interconnect with AT&T either pay negotiated rates or they pay "in kind" by exchanging roughly equivalent levels of traffic through settlement-free peering arrangements.[32] That has been standard industry practice since the Internet's inception, and it serves the vitally important goal of encouraging network investment and innovation.

The congestion described by Cogent and Netflix occurred not because of capacity limitations on AT&T's network, but by business strategies adopted by Cogent and Netflix.[33] Specifically, Netflix insisted on funneling its traffic to AT&T through only a handful of peers, including Cogent,[34] because, as Netflix has stated, these few providers offered the best bids in terms of price and service.[35] As one network analyst has explained, "Netflix chose to create, and use paths that [it] knew were congested, simply because they were cheaper than using paths that

---

[29] Comments of Netflix, Inc. at 11-16, 23-32 (filed Sept. 16, 2014); Comments of Cogent Communications Group at 6-16 (filed Sept. 16, 2014).

[30] *See* Joint Opposition at 39-49; Declaration of Scott Mair, Senior Vice President of Technology Planning and Engineering, AT&T Services, Inc. ¶¶ 19-42 ("Mair Decl.").

[31] *Id.* ¶ 9.

[32] *Id.* ¶¶ 12-13.

[33] *See id.* ¶¶ 6, 20-23, 34, 40.

[34] *See id.* ¶ 23.

[35] Reply Comments of Netflix, Inc. at 6-7 (filed Jan. 7, 2015).

were less congested."[36] This strategy apparently overwhelmed Netflix's chosen low price providers, causing congestion and impacting service quality for its customers.

The congestion that occurred on the links between Netflix's chosen low-cost transit providers and AT&T could easily have been avoided. There are numerous alternative routes into AT&T's network,[37] and AT&T had ample capacity available on these alternative routes during the period in question.[38] At all relevant times, for example, AT&T's total peering capacity **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]**[39] As of April 2014, there was a **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]** utilization rate across the links of all peers.[40] Unfortunately, Netflix chose to utilize only a small subset of these routes, rather than spreading its traffic over multiple routes to avoid congestion.

The record shows that network congestion can harm AT&T just as it can harm an OVD. In the period relevant to Netflix's claims, **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]**[41] For these reasons, AT&T worked cooperatively with

---

[36] Michael Powell, *Why is Netflix Strong Arming the Net Neutrality Debate?*, Platform, Technology, TV & the Future (June 12, 2014), *available at* https://www.ncta.com/platform/public-policy/why-is-netflix-strong-arming-the-net-neutrality-debate/ (quoting network analyst Dan Rayburn). The recent study by researchers from MIT and the Center for Applied Internet Data Analysis ("CAIDA") on Internet interconnection and congestion found that "content providers or CDNs have additional degrees of freedom to control congestion, by hosting content . . . at locations close to its consumers, and strategically selecting from which source to transmit the content, in order to affect congestion, improve performance, or reduce the cost of the transmission." David Clark et al., *Measurement and Analysis of Internet Interconnection and Congestion*, at 13 (Aug. 15, 2014), *available at* http://www.caida.org/publications/papers/2014/measurement_analysis_internet_interconnection/measurement_analysis_internet_interconnection.pdf.

[37] Mair Decl. ¶ 23.

[38] *Id.* ¶ 24.

[39] For instance, in April 2014, AT&T's peering capacity **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]**. ATT-FCC-00945994.

[40] *Id.*

[41] *See, e.g.*, ATT-FCC-00438444 **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]**

Footnote continued on next page

both Netflix and Cogent to reduce network congestion and improve the quality of Netflix's service. Last year AT&T and Netflix reached a commercial solution that fully addressed these issues.[42]

AT&T's current long-term contract with Netflix **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]**

[END AT&T HIGHLY CONFIDENTIAL INFORMATION] and cannot seriously be considered to have any effect on Netflix's competitiveness.[46] The terms of this agreement, which are very favorable to Netflix, and the record overall belie any intent to foreclose OVD competition through congesting interconnection links or any other means.[47]

Footnote continued from previous page

[END AT&T HIGHLY CONFIDENTIAL INFORMATION]; ATT-FCC-01080292 **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]**

[END AT&T HIGHLY CONFIDENTIAL INFORMATION]; ATT-FCC-00298422 (email discussing the congestion that had begun appearing on AT&T's peering links, and raising the issue of its impact on consumers in order to seek input on the issue from others at AT&T); ATT-FCC-02459548 **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]**

[END AT&T HIGHLY CONFIDENTIAL INFORMATION]; ATT-FCC-01204974 (email discussing customer impact of increase in Netflix traffic).

[42] Joint Opposition at 44; Mair Decl. ¶¶ 25-30.

[43] *See* ATT-FCC-00903794; Mair Decl. ¶¶ 7, 26-28; Joint Opposition at 44.

[44] Mair Decl. ¶ 26.

[45] *Id.* ¶¶ 26-28.

[46] *Id.*; Joint Opposition at 44.

[47] *See*, *e.g.*, Mair Decl. ¶¶ 5, 7, 24; Katz Reply Decl. ¶¶ 74, 75.

IV.
CONCLUSION

While commenters have expressed concern about the *potential* for this transaction to affect OVD services, there are no facts to support that concern. To the contrary, the record establishes that this transaction would have no impact on AT&T's ability or incentive to harm OVDs. To succeed in the market, especially against entrenched cable rivals, AT&T must continue to promote high-quality access to OVD content.

Respectfully submitted,

/s/ Maureen R. Jeffreys
Maureen R. Jeffreys
Arnold & Porter LLP
555 Twelfth Street, NW
Washington, DC 20004
(202) 942-6608
maureen.jeffreys@aporter.com
Counsel for AT&T Inc.

/s/ William M. Wiltshire
William M. Wiltshire
Harris, Wiltshire & Grannis LLP
1919 M Street, NW
8th Floor
Washington, DC 20036-3537
(202) 730-1350
wwiltshire@hwglaw.com
Counsel for DIRECTV